

(2011) 01 SC CK 0045

In the Supreme Court Of India

Case No : Civil appeal No. 705 of 2011 (Arising out of SLP (C) No. 23706 of 2010) , Civil Appeal No. 706 of 2011 (Arising out of SLP (C) No. 23881 of 2010) , Civil Appeal No. 707 of 2011 (Arising out of SLP (C) No. 28234 of 2010) and Civil Appeal No. 708 of 2011 (A

Zuari Cements Ltd. and Others

APPELLANT

Vs

A.P. Power Generation Corporation Ltd. and Others

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Citation : (2012) 12 SCC 530

Hon'ble Judges : R. V. Raveendran, J;A. K. Patnaik, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. Memoranda of Understandings (MO Us) were executed between the first Respondent - Andhra Pradesh Power Generation Corporation Limited and cement companies who are the Appellants herein for lifting of fly ash from its Thermal Plants. Subsequently the first Respondent Corporation terminated the MO Us alleging breach on the part of the Appellants. However, even after such termination, the first Respondent permitted the cement companies to take 80% of the fly ash from two Thermal Units.

3. Subsequently the first Respondent Corporation invited tenders in regard to the sale of fly ash and the cement companies challenged the notice inviting tenders by filing writ petitions. The said writ petitions are pending. The learned Single Judge had passed an interim order therein prohibiting finalization of tenders, on the ground that the Appellants had been permitted to receive supply of fly ash even after termination of MO Us. The said interim order passed by the learned Single Judge was challenged by the first Respondent- Corporation by filing writ appeals. A Division Bench of the Andhra Pradesh High Court by the impugned orders set aside the interim orders of the learned Single Judge, with an

observation that pending finalisation of tenders, the first Respondent Corporation may consider supplying fly ash to the writ Petitioners for use in their industry. The effect of the order of the Division Bench is that the first Respondent-Corporation is not bound to supply fly ash to the Appellants.

4. The Appellants contend that tenders could not be issued with respect to supply of fly ash from the same units with respect to which the Appellants have subsisting agreements.

5. When the special leave petitions were filed by the Appellants, this Court initially on 27th August, 2010 made an ex-parte order directing interim stay of the order of the Division Bench for a period of one month, subject to Appellants making payment at the rate of Rs. 90/- per metric tonne of fly ash to the first Respondent. Subsequently in other cases similar orders were passed.

6. The learned senior counsel appearing on behalf of the Respondent-Corporation submitted that the Appellants have themselves made an offer of Rs. 390/- per metric tonne or more in response to the tender notice and, therefore, they cannot get fly ash at any lesser rate.

7. Learned Counsel for the Appellants submitted that their contracts for supply at lesser rates are subsisting; that higher offers relate to other units; and that distance of the thermal unit from their respective cement factories plays an important role in the price offered. Various other grounds are also urged by the Appellants.

8. It is not necessary to examine this aspect at this stage as the writ petitions are still pending. Interest of justice would be served if a suitable interim arrangement is made for supplies pending the decision in the writ petitions.

9. We, therefore, dispose of the appeals modifying the interim order already granted by directing the continuation of the interim order during the pendency of the writ petition, subject to the condition that the Appellants shall make payment for the fly ash taken from the respective dates of interim orders of this Court and for future supplies during the pendency of the writ petitions, at the provisional rate of Rs. 250/- per metric tonne (instead of Rs. 90/- per metric tonne) subject to final accounting and final decision in the pending writ petition.

10. If the Appellants fail in the writ petitions, they shall be liable to pay the difference in price based upon the highest offer received in response to the tender notice, in regard to the supplies received in pursuance of the interim orders, to the first Respondent with interest on such difference at 10% per annum from the respective due dates.

11. Having regard to the facts and circumstances and continuation of the interim arrangement, we request the learned Single Judge to dispose of the pending writ petitions expeditiously, preferably within three months from today.